

The amendment of Claim 18 by the addition of the recitation that the patch does not cover the bag bottom or the bottom seal, with the bottom seal being through the bag but not through the patch, is supported by Figures 11 and 12, and the accompanying description located at Page 33 line 14 through Page 34 line 3. Figures 11 and 12, together with the accompanying description on Pages 33-34, disclose a patch bag having a patch which covers both the first seamless side edge of the bag and the second seamless side edge of the bag, as well as a backseamed seal which is through the first film (the bag film) but not through the second film (the patch film). The amendment of Claim 28 merely deletes a recitation corresponding with the recitations added to Claim 18. No new matter is added by the amendments.

II. The §102(b) Rejection of Claim 18 as Unpatentable over RANDALL

In Paragraph 4 of the 5 July Office Action, Claim 18 is rejected under 35 USC 102(b) as unpatentable over British specification 654,460, to Randall ("RANDALL"). The Office Action states that Figure 18 of RANDALL discloses a lay-flat bag having a reinforcing piece wrapped around a portion of the seamless edges of the bag, without touching the sealed bottom.

In response, Applicants contend that for several reasons, Claim 18 as amended above is not anticipated by RANDALL, and is patentable over RANDALL. First, the patch in Figure 18 of RANDALL does, in fact, cover the bottom of the bag. Figure 19 is to be considered together with Figures 17 and 18. See RANDALL, Page 8 lines 91-119. As is apparent from this portion of RANDALL, the patch of Figure 17 is applied to the bag as illustrated in Figures 18. Moreover, the patch has various folds 93a, 94a, 93c, and 94c designed so that it covers the "block bottom of the bag." RANDALL, Page 8 lines 102-115.

Thus, contrary to the statement in the Office Action, RANDALL does not disclose a lay-flat bag having a patch which does not cover the sealed bottom. In fact, a review of Pages 1, 2, and 3 of RANDALL reveals that RANDALL teaches covering the bag bottom with the reinforcing piece. In contrast, Claim 18, as amended above, recites the patch as not covering the bottom of the bag, with the patch also not extending to the bottom seal, and with the bottom seal being through the bag but not through the patch. None of these

features are present in the bag of Figure 18 of RANDALL. Moreover, RANDALL does not teach or suggest a patch bag in which the patch does not cover the bottom of the bag. Rather, RANDALL teaches to reinforce the bottom of the bag with a reinforcing member. As such, Applicants contend that Claim 18 is patentable over RANDALL.

III. The §103(a) Rejection of Claims 1-7 and 22-25 as Unpatentable
over BRADY et al in view of WILLIAMS et al

In Paragraph 6 of the 5 July Office Action, Claims 1-7 and 22-25 are rejected under 35 USC 103(a) as unpatentable over WO 96/00688, ("BRADY et al") in view of USPN 5,540,646, to Williams et al ("WILLIAMS et al"). The Office Action refers to Figure 11 of BRADY et al as disclosing a bag without a patch, and further states that BRADY et al does not teach a patch that covers a portion of the lay-flat side of the bag, but does not cover either seal, but then states that Figure 3 of WILLIAMS et al discloses a patch covering one unsealed edge of the outside of the bag, with the patch covering an area exposed to bone for the packaging of bone-in meat products. The Office Action concludes that Applicants' claimed invention is obvious because one of ordinary skill in the art would have applied a patch to the bag of BRADY et al at the unsealed edge if the meat product had bones in that area.

In response, Applicants contend that Claims 1-7 and 22-25 are nonobvious over BRADY et al in view of WILLIAMS et al. BRADY et al is directed to a patch bag in which the patch ²³²all the way to the edge of the bag. In the embodiments of Figures 1 and 2, the patches cover up to, and extend beyond, both folded side edges of an end-seal bag. In Figures 8, 9, and 10, the patches cover up to, and extend beyond, the folded bottom edge of a side-seal bag. The embodiment of Figure 11 of BRADY et al, disclosed as "laminated patch bag 232", also provides patch coverage over the bottom seal 248, over a side seal 246, and over a folded side edge 242 of laminated patch bag 232. See Page 30 line 34 through Page 31 line 7. Outside film 234 is the patch film, while inside film 238 is the bag film. In this manner, the embodiment of Figures 11 and 12 of BRADY et al, in conjunction with the associated portion of the specification, are teaching that laminated patch bag 232 already has a patch, and requires no further patch. In stark contrast to laminated patch bag 232 of BRADY et al, Applicants' claimed patch bag has a bottom seal in an area of the bag which

is not covered by the patch, and a side seal in an area of the bag which is not covered by the patch. See Claim 1, as currently pending.

? — Any modification of laminated patch bag 232 of BRADY et al in which outside film 234 (i.e., the patch film) is reduced in size so that it does not cover side seal 246 or bottom seal 248 is a modification directly contrary to the teachings of BRADY et al. Applicants acknowledge that WILLIAMS et al discloses a patch bag in which the patch does not extend to the seals, but to use this teaching in WILLIAMS et al to modify BRADY et al to arrive at Applicants' claimed patch bag is to modify BRADY et al in a manner which BRADY et al teaches directly away from. Since any proposed modification which is contrary to the teachings is also contrary to the law, Applicants contend that no prima facie case of obviousness of Claims 1-7 and 22-25 has been made out by the Office Action.

Previous
S. Dyns — In addition, Applicants point out that WILLIAMS et al is directed to a patch bag in which a patch covers one side edge or the bottom edge of the bag, wherein the bag is made by inflating and deflating a tubing. As such, WILLIAMS et al discloses adhering a patch to a lay-flat, seamless tubing, followed by inflating the tubing, and thereafter deflating the tubing in a second lay-flat configuration so that the patch is repositioned. As such, WILLIAMS et al is directed to side-seal and end-seal bags formed from seamless tubings. An end seal bag has a bottom seal and folded side edges. A side-seal bag has a folded bottom and sealed side edges. However, neither of these bags has a bottom seal and a side seal, as recited in Applicants' claims. Thus, to use WILLIAMS et al to modify BRADY et al to arrive at Applicants' claimed patch bag is to use WILLIAMS et al in a manner contrary to the teachings of WILLIAMS et al. This is yet another reason that the Office Action fails to make out a prima facie case of obviousness of any one or more of Claims 1-7 and 22-25.

IV. The §103(a) Rejection of Claims 20 and 33 as Unpatentable Over WILLIAMS et al

In Paragraph 7 of the 5 July Office Action, Claims 20 and 33 are rejected under 35 USC 103(a) as unpatentable over USPN 5,540,646, to Williams et al ("WILLIAMS et al"). The Office Action states that Figure 4 of Williams et al refers to a bag having seams at both sides and bearing a reinforcing patch covering the bottom edge. The Office Action

acknowledges that WILLIAMS et al does not disclose a patch length which is 101-200% of the bag length (Claims 20) or a patch width which is 20-190% of the bag width.

Primer?
In response, Applicants contend that Claims 20 and 33 are patentable over WILLIAMS et al. Applicants acknowledge that WILLIAMS et al discloses a patch bag in which a patch covers the bottom edge of the bag. However, WILLIAMS et al is directed to a patch bag made by adhering a patch to a lay-flat tubing. As illustrated and described, the tubing is a seamless tubing. The tubing with the patch adhered thereto is inflated, deflated in a second lay-flat configuration, and formed into a bag while in that second lay-flat configuration. As such, WILLIAMS et al discloses adhering a patch to one side of a lay-flat, seamless tubing, followed by inflating the tubing, and thereafter deflating the tubing in a second lay-flat configuration so that the patch is repositioned. See Figures 8 and 9 of WILLIAMS et al. The patch illustrated in Figures 8 and 9 has a width less than the width of the tubing. There does not appear to be any teaching or suggestion in WILLIAMS et al that the patch can have a width greater than the width of the tubing. The Office Action acknowledges this point.

→ However, in order to meet Applicants' claimed patch bag having a patch which is more than 100% of the length of the bag, the patch would have to be increased in size so that it extended outward of the width of the uninflated lay-flat tubing illustrated in Figures 8 and 9 of WILLIAMS et al. Applicants contend that one of ordinary skill would not find this modification of the WILLIAMS et al process to have been obvious.¹ Moreover, this modification is fraught with problems. The adhesive on the extending portions of the patch frouls the rollers, and WILLIAMS et al provides no disclosure of any manner of ensuring that the extending portions of the patches wrap around the inflated tubing. In fact, a solution to various problems of carrying out such a process is the subject of copending USSN 09/042,479, to Ennis et al, assigned to the same assignee as the instant application. As a result, Applicants contend that it would not have been obvious to enlarge the patches on the bag of WILLIAMS et al.

Primer?
The instant application makes it much easier to make the claimed bag, because the starting point is a flat film rather than a seamless tubing. The patch is adhered to the flat

*Shows
Process* film, which is then folded to produce the claimed bag. See Applicants' Figures 13A-13D. In this manner, problems with extending patch edges are avoided. However, WILLIAMS et al does not teach or suggest such a process, and Applicants contend that due to the problems associated with using the process of WILLIAMS et al to result in Applicants' claimed patch bag, it would not have been obvious to lengthen the patches of WILLIAMS et al to result in the patch bag of Applicants' Claims 20 and 33.

V. The §103(a) Rejection of Claims 26-30 as Unpatentable
over RANDALL al in view of BRADY et al

In Paragraph 8 of the 5 July Office Action, Claims 26-30 are rejected under 35 USC 103(a) as unpatentable over British 09/042,479 ("RANDALL") in view of BRADY et al". The Office Action states that while RANDALL does not disclose the laminar features recited in the claims, that BRADY et al does disclose the various films recited in Claims 26-30.

In response, Applicants contend that Claims 26-30 are patentable over RANDALL in view of BRADY et al. Applicants note that Claims 26-30 are all dependent upon Claim 18. Applicants contend that Claim 18 is patentable over RANDALL for the reasons provided under heading "II" above. That is, RANDALL teaches to cover the bottom of the bag with the reinforcing member, while Claim 18 recites the bottom of the bag as not being covered by the patch. Moreover, Applicants contend that RANDALL does not teach or suggest using a patch which does not cover the bottom of the bag. As such, Claims 26-30 are patentable for at least the same reasons that Claim 18 is patentable. The fact that BRADY et al discloses films in accordance with the features recited in Claims 26-30 does not detract from the fact that Claim 18 recites features which are directly contrary to the teachings of RANDALL. Accordingly, Claims 26-30 are patentable over RANDALL in view of BRADY et al.

¹ Applicants note that this rejection, being based on WILLIAMS et al, requires the use of the WILLIAMS et al process to achieve the modified bag.

The §103(a) Rejection of Claims 31, 32, 34, and 35 as Unpatentable
over BRADY et al in view of WILLIAMS et al

In Paragraph 9 of the 5 July Office Action, Claims 31, 32, 34, and 35 are rejected under 35 USC 103(a) as unpatentable over BRADY et al in view of WILLIAMS et al. The Office Action states that BRADY et al does not show the patch positioning shown in Figure 4 of WILLIAMS et al, and that WILLIAMS et al does not disclose the recited laminar features of the films used in the claimed bags, but concludes that it would have been obvious to employ the films of BRADY et al in making the bags of WILLIAMS et al.

Applicants contend that Claims 31, 32, 34, and 35 are patentable over BRADY et al in view of WILLIAMS et al. More particularly, Applicants note that Claims 31, 32, 34, and 35 are all dependent upon Claim 20. Claim 20 recites a side-seal patch bag having a patch, i.e., a single patch, which has a length of from 101-200 percent of the length of the bag, i.e., greater than the length of the bag. In contrast, the closest embodiment in BRADY et al, i.e., the embodiment of Figures 8-10 of BRADY et al, has two patches, each of which has a length which is less than the length of the bag. Of course, this is directly contrary to the subject matter of Claims 31, 32, 33, and 34.

Applicants further point out that WILLIAMS et al provides no teaching or suggestion to utilize a single patch which covers the bottom edge of the bag and which has a length of from 101-200 percent of the length of the bag, for the reasons advanced under heading "IV" above.² Applicants also point out that WILLIAMS et al is not needed for the disclosure of the particular film layers, as Applicants acknowledge that such is disclosed in BRADY et al. Nevertheless, Applicants maintain that Claims 31, 32, 34, and 35 are patentable over BRADY et al in view of WILLIAMS et al because BRADY et al teaches away from using one patch having a length greater than the length of the bag, and there is no teaching or suggestion in WILLIAMS et al to modify BRADY et al in this manner. Applicants further point out that to modify BRADY et al in this manner would be contrary to BRADY et al, which teaches a side seal bag utilizing two overhanging bonded patches instead of one patch having a length longer than the bag length. Accordingly, Applicants

² Applicants realize the Office Action is not relying upon WILLIAMS et al in this manner. However, Applicants provide this comment because similar reasoning was used in the rejection of Claim 20.

contend that Claims 31, 32, 34, and 35 are patentable over BRADY et al in view of WILLIAMS et al.

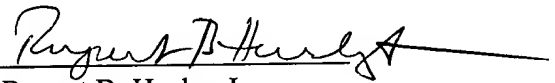
CONCLUSION

Reconsideration of the patentability of the pending claims is respectfully requested, in view of the amendments and arguments set forth above.

Sealed Air Corporation
Cryovac Division
P.O. Box 464
Duncan, SC 29334
(864) 433-3247

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Respectfully submitted,


Rupert B. Hurley Jr.
Attorney for Applicants
Registration No. 29,313